IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.1633 of 2004

IN

A.O.NO.1145 OF 2004

M/s.City & Industrial Development Corporation of Maharashtra Ltd. .. Applicant

vs.

M/s. Sudradh Construction P. Ltd. .. Respondent.

Shri G.S.Hegde, Advocate for the Appellant.

Shri Arun Tripathi with Akilesh S. Dubey, Advocate for the Respondent.

CORAM : A.S.OKA, J.

DATED : 29th March, 2005.

P.C. :

1. Heard Counsel appearing for the parties. The appeal is already admitted. The allotment of the suit plot was made by the Appellant in favour of the Respondent No.1 under the New Bombay Disposal of Lands Regulations, 1975. The first instalment of the lease premium was payable by the Respondent No.1 in February 1998 and the second instalment was payable in March 1998. Admittedly

the second instalment is not paid till today. Therefore, the allotment of the suit plot in favour of the Respondent No.1 was cancelled by the Appellant which is the New Town Development Authority for City of New Bombay. A Suit was filed by the Respondent No.1 in which application for temporary injunction was made. The learned Judge has allowed the application for temporary injunction by passing the following order:

> "Application is allowed.
>
> 2. Issue ad-interim temporary injunction restraining the defendant Corporation from creating third party interest in the suit plot to the extent of proportionate money paid by the plaintiff till disposal of the suit. Cost in cause.
>
> 3. Original order be kept in Spl.C.C.no.206/04 and zerox copies of this Order be kept in SPL.C.S.no.207/04 to 209/04.

Though the learned Judge has purportedly passed order only in respect of proportionate share in the suit plot, the real effect of order is that there was temporary injunction granted in respect of the entire plot as it is not the case that the suit plot is divisible.

3. The learned Counsel appearing for the Respondent No.1 submitted that under the New Bombay Disposal of land Regulation, 1975, the allotment can be cancelled only if there is a default in the payment of first instalment of the lease premium. He submits that in case of default in payment of second instalment there is no provision for cancelling the allotment and infact if the allottee is in arrears of the lease premium it can be recovered as arrears of land revenue.

4. The Respondent No.1 is original Plaintiff and wants to claim an equitable relief. He has not paid the second instalment of the lease premium which is approximately 50% of the total lease premium payable and which was due and payable in the year 1998. From the year 1998 till today nothing is deposited by the Respondent No.1. The suit was filed in the year 2004 and even during the pendency of the suit no amount has been deposited. In view of such conduct there was no question of granting any equitable relief in favour of the Respondent No.1. The Appellant is a

statutory body. The effect of granting interim injunction by the learned trial Judge is that the statutory body could not dispose of the suit plot in favour of a deserving purchaser who could have paid entire lease premium.

5. In view of this position, case is made out for granting stay and accordingly Civil Application is allowed in terms of prayer clause (a).

6. It is made clear that the observations made by this Court are only prima facie observations for limited purpose of considering the prayer for stay. The trial Court will decide the suit on its merits without being influenced by the said observations. The pendency of the appeal will not operate stay of the proceeding of the suit and the trial Court will proceed with the hearing of the suit.

7. The learned Counsel appearing for the Respondent No.1 prays for stay of this Order. Considering the facts and circumstances of the

case, prayer is rejected.

(A.S.Oka, J.)